IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 314 OF 2000

Alex Jakuzar Kutinho ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Ms. Sharmila Kaushik -advocate appointed for the appellant.
Mrs. U.V. Kejariwal APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 16TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment and conviction passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No.604 of 1996 convicting the accused under section 302 of IPC to suffer imprisonment for life and to pay a fine of Rs. 500/- in default of payment to undergo R.I. for three months, this appeal has been preferred on the ground mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of Ms. Sharmila Kaushik advocate appointed for the accused/appellant, and

Additional P.P. Mrs. U.V. Kejariwal, we have scrutinised the record and re-appreciated the evidence on record, on the basis of which the learned trial Judge passed the order of conviction.

3. The prosecution story as emerges from our re-appreciation fo the evidence stated briefly is that on 15th March 1996 the accused stabbed the victim in presence of two eye witnesses, hailed a taxi went to Azad Maidan Police station and surrendered himself to the Station House Officer available there. The officer then on the basis of the statement made by the accused, went to the place mentioned by him to find the person lying in a pool of blood at Sorabji Santok Lane, Dhobi Talao, Bombay. On the basis of enquiry carried out thereafter, the accused was duly arrested, investigation was completed.

4. The prosecution examined as many as ten witnesses and on appreciation of their evidence the learned trial Judge convicted the accused as aforesaid. This judgment of conviction is assailed before us by the learned counsel appearing on behalf of the appellant on several grounds. The contentions raised by the learned counsel stated in nutshell is that the medical evidence is proved beyond doubt that the victim had 17 stab

injuries on his person and the prosecution has proved causing of only four of them by the accused, by examining the eye witnesses P.ws.2 and 3. According to her there are several substantial and serious injuries on the person of the accused, which are not explained. The doctor has deposed that several of the injuries were sufficient individually and collectively to cause death and therefore benefit of the unexplained serious injuries must go to the accused and the accused is therefore liable to be acquitted.

5. This contention was streneously opposed by the learned prosecutor for the State pointing out that the accused cannot escape from the injuries caused by him and the causing of which is proved beyond doubt by P.ws. 2 and 3. It is obvious from the evidence of medical officer that those injuries proved to have been caused by the accused, and were also sufficient to cause death. She therefore prayed for dismissal of the appeal.

6. P.w.1 is the Station House Officer, who arrested the accused, seized the knife, went to the spot, saw the body, wrote the FIR on the basis of which investigation was conducted by the Senior P.I. P.w.8. From the deposition of this witness, it is clear that

the accused himself came to the police station, his clothes were stained with blood and was holding a 9" knife which was also blood stained. The testimony of this witness factually does not need corroboration but is there in the deposition of P.w.7, the taxi driver who deposed before the court that he was stopped by the accused, when he was stopped, he noticed blood stained knife in the hands of the accused and his clothes were also stained with blood. He took the accusdd to Azad Maidan Police station where the accused walked into the police station. This witness is therefore fully corroborates P.w.1 , the Station House Officer, and it is therefore proved that the accused did voluntary go to the police station and that he saw the clothes of the accused were blood stained and a knife stained with blood had with him.

7. P.ws 2 and 3 are the eye witnesses. They described the manner in which the accused stabbed the victim. Both have been cross examined but their cross examination is inconsequential. A submission is sought to be made on behalf of the accused that even if their testimony is accepted both of them saw one incident and therefore only two injiries have been caused by the accused which have been proved. According to the counsel, therefore, for unexplained serious 15 other

injuries,the accused cannot be held responsible. Even the injuries in the stomach and chest are more than four in number and therefore it cannot be said with any certainty as to which injury caused death. We will consider this aspect at a later stage but the fact stands proved that the accused did give four knife blows to the victim, two of them were on the chest and two were on the stomach.

8. P.w.5 panch Govind proves the seizure of the blood stained knife. P.w.6 panch Vishnu proves the arrest of the accused and seizure of his clothes etc. P.w.8 Shirish Inamdar is the investigating officer, who proves how the investigation was conducted. P.w.9 is the doctor who proves that the death was homicidal.

9. In view of the testimony of P.ws. 2 and 3 that they saw the accused giving stab injuries to the victim, the accused cannot escape from the liability of that assault. In our opinion, the accused must get benefit of unexplained injuries in so far as his guilt is concerned. He cannot be held guilty of murder. Because there is no proof as to why he assaulted the accused. Motive is totally absent. We also cannot ignore the fact that the accused himself surrendered to the police and led the police to the scene of offence.

The unexplained serious injuries are yet another factor, which militates against conviction of the accused for murdering the victim. At the same time, the accused cannot escape from the penalty for assault with deadily weapon on the person of the victim. In our opinion, therefore, interest of justice would be met, if the accused is convicted under section 304-II IPC instead of section 302 of IPC. The accused is in jail since the time of his arrest in the year 1996 March. He has thus completed eight and a half years in jail. In our opinion, this much imprisonment for the offence under section 304-II is enough, taking into consideration, the fact that after stabbing the victim, the accused went and surrendered to the police. We also must note of the fact that there is no evidence of motive or intention on the part of the accused. In such circumstances, this appeal is liable to be allowed partly. We accordingly allowed the appeal partly. The conviction and sentence under section 302 IPC is set aside. Instead the accused is convicted under section 304-II IPC and sentenced to suffer imprisonment already undergone by him since the date of his arrest in March 1996. He be released immediately if not required for any other offences. Appeal accordingly disposed of.

10. We quantified the fees to be paid to the advocate appointed for the appellant and the APP at Rs. 1000/- for this appeal.

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